

Commonwealth Edison Co.  
Comments on ORMD's Draft Edits of  
Rule 451 and Rule 455  
November 17, 2009

ComEd appreciates the opportunity to offer comments on the proposed revisions to Code Part 451 and for the new Code Part 455 prepared by the Office of Retail Market Development ("ORMD"). These rules are significant and clearly reflect considerable effort by Staff. ComEd is consolidating its comments for both Code Parts herein.

**Overall Comments:**

Both code parts need additional definitions to ensure overall clarity. With the unique opportunity of having three (3) open Code Parts around ARES and RESs (Code Parts 412, 451, and 455), defined terms should be consistent.

In the revisions to Code Part 451, definitions should be added for the following: Single Billing Services, Retail Electric Suppliers ("RESs"), small commercial customers, and for Regional Transmission Organizations ("RTOs"). In the new proposed Code Part 455, defined terms should add RESs, "banked" and "retired" (regarding Renewable Energy Credits), and alternative compliance payments.

**Revisions to Code Part 451**

It appears that in addition to revisions to this code part resulting from Public Act 96-0159, the ORMD is taking the step to perform some housekeeping on this Part. ComEd is supportive of this step, but finds it necessary to point out a few items that need additional tweaks or to have the indicated changes removed.

**Section 451.20(b):** This original section, which was stricken, should be reinserted as this is a part of the legislative requirements for an ARES to serve retail customers (See Sect. 16-115(d)(3)) of the Act.

**Section 451.30:** The phrase "unless the applicant has no facsimile or e-mail address" should be deleted.

**Sections 451.110(a)(4), 451.220(a)(4) and 451.320(a)(4):** As revised, these sections require a RES's unconditional guarantee, payment bond or letter of credit to be made "payable to the incumbent utility in favor of bundled rate customers to be credited through the applicable purchased power rider for each service territory the applicant serves." This requirement would effectively make electric utilities the clearinghouse for payments to the former customer of failed or exiting RESs. ComEd objects to the provision of such new services to RESs and/or their customers. (See 83 Ill. Adm. Code 5/16-103(e)).

It is also completely unclear what the phrase “in favor of bundled rate customers credited through the applicable purchased power rider” is intended to require and whether that intent is consistent with the existing rule. This requirement erroneously assumes that all customers of a failed or exiting RES will obtain supply from ComEd (whether at hourly or fixed prices) and are not picked up by another RES. It should be noted that ComEd’s Rate RESS requires RESs exiting the market to provide 60-days notice and to notify its customers before submitting DASRs. Thus, it is conceivable that a customer, particularly customers over 1 MW in demand, will find alternative suppliers and will not receive any benefit from this financial requirement imposed upon RESs.

Further, the stated purpose of these sections is for a RES to “reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant’s failure to comply with a contractual obligations to supply such energy.” However, this new phrase can be construed as requiring utilities to effectively credit all of its supply customers – not just those who were served by the failed or exiting RES. In addition, some determination of the amounts to credit fixed price and hourly customers, the supply costs for which are tracked through separate rider mechanism by ComEd, will be required.

Finally, to the extent the phrase was intended to require utilities to determine what the incremental cost of supply is for each customer of the failed or exiting RES and to allocate some portion of the amounts received to such customers, this would require utilities to essentially establish a costly and burdensome claims process for such customers, since ComEd is not privy to the prices charged by RESs and would have to decipher the contract provisions, as well as develop a methodology for allocating costs to the extent the funds are insufficient to cover each customers incremental supply costs.

**Section 451.340:** The word “demonstrated” has been deleted, at a minimum it should be replaced by “verifiable.”

**Section 451.400:** The term retail customers has been deleted, but should be left in, and perhaps the entire term should be updated to “eligible retail customers.”

### **New Code Part 455**

**New Section 455.110:** It is unclear whether there is an intended difference between the terms “delivered” (ARES) and “supplied” (electric utilities selling supply outside their service territories. For example, does “supplied” reflect a gross, wholesale energy number (i.e., before line losses) while the former reflects a net, retail energy number (i.e., after accounting for line losses)? It would be appropriate for the Commission to clarify the meaning and application of these terms, as used in Sections 16-115D(a) and (g) of the Public Utilities Act.

**New Section 455.130:** Subpart (a) uses the term “utility” without the qualifying and somewhat cumbersome phrase “serving retail customers outside their service areas,” which may cause some confusion. It may be more efficient to introduce a new acronym for such utilities and use that term throughout rule.

**New Section 455.140(a):** This section is in conflict with Part 420.APPENDIX A(42)(a-g), which requires utilities to handle only 24 months of billing data. This section contemplates adding 36 months of data after the compliance period, essentially providing up to 48 months of data to be held.